

Sentencing Council meeting:
Paper number:

25 June 2021
SC(21)JUN06 – Motoring offences
causing death or injury

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1 ISSUE

1.1 A revised guideline for motoring offences has been on the Council's workplan for some time and work has not commenced due to expectations that the government may legislate to increase sentences for some offences. This legislation is now imminent and it is thought the project should now commence to ensure guidance is available to support the introduction of the legislative changes. This is the first meeting to consider the scope of the motoring offences guideline and which offences should be included.

2 RECOMMENDATION

2.1 The Council is asked to:

- Consider and agree the scope of the motoring offences guideline.

3 CONSIDERATION

3.1 Motoring offences are among the highest volume offences dealt with by the courts and there has been demand for revised guidelines for some time, as well as legislative changes for some offences. Guidelines for offences which are summary only were updated in 2016 as part of the MCSG project. The MCSG also includes limited guidance for sentencing dangerous driving and careless driving offences, but no guidance is available in the Crown Court for these offences. Offences where a death is involved are included in the SGC Causing Death by Driving guideline which was published in 2008, and it is proposed that this project will provide for revised and updated guidelines for these offences, and replace the SGC guideline.

3.2 It is anticipated that the Police, Crime, Sentencing and Courts (PCSC) Bill currently before Parliament will result in changes to statutory maximum sentences for some offences. These include increasing the statutory maximum sentences for causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs to life

imprisonment. This does not prevent work to revise guidelines commencing, but consideration of sentences for these offences will be left towards the latter end of the project to enable the Bill to progress through Parliament.

Scope of guideline.

3.3 The offences within scope of the guideline are as follows;

Offence	Provision and statutory maximum sentence	Existing guidance
Dangerous driving	(s2, Road Traffic Act 1988) Stat max 2 years	SGC
Causing death by dangerous driving	(s1 Road Traffic Act 1988) Stat max currently 14 years to increase to life under PCSC Bill	SGC
Causing death by careless driving	(s2B RTA 1988) Stat max 5 years	SGC
Causing death by careless driving under the influence of drink or drugs	(s3A, RTA 1988) Stat max currently 14 years to increase to life under PCSC Bill)	SGC
Causing death by driving whilst unlicensed or uninsured	(s3ZB, RTA 1988) Stat max 2 years imprisonment	SGC
Causing death by driving whilst disqualified	(s3ZC, Road Traffic Act 1988) Stat max 10 years imprisonment	SGC
Causing serious injury by dangerous driving	(s1A, Road Traffic Act 1988) Stat max 5 years	None
Causing serious injury by driving whilst disqualified	(s3ZD, Road Traffic Act 1988) Stat max 5 years	None
Aggravated vehicle taking without consent – death caused	(s12A 2(b), Theft Act 1968) Stat max 14 years	None
Aggravated vehicle taking without consent – injury caused	(s12A 2(b), Theft Act 1968) Stat max 2 years	MCSG
Aggravated vehicle taking without consent – dangerous driving	s12A 2(a) Theft Act 1968) Stat max 2 years	MCSG
Aggravated vehicle taking without consent – vehicle/property damage of £5,000 or over	(s12A 2(c) and (d), Theft Act 1968) Stat max 2 years	MCSG
Aggravated vehicle taking without consent – vehicle/property damage of less than £5,000	(s12A 2(c) and (d), Theft Act 1968) Stat max 2 years (6 months in magistrate’s court)	MCSG

3.4 Volumes of offences for the period 2015-2019 are as follows:

Offence	2015	2016	2017	2018	2019
Dangerous driving	3,189	3,599	3,592	3,437	3,712
Causing death by dangerous driving	120	156	188	152	173
Causing death by careless driving	170	226	187	183	149
Causing death by careless driving under the influence of drink or drugs	21	32	22	21	19
Causing death by driving whilst unlicensed or uninsured	2	5	3	6	6
Causing death by driving whilst disqualified	0	0	0	0	2
Causing serious injury by dangerous driving	266	297	353	350	351
Causing serious injury by driving whilst disqualified	2	2	3	4	5
Aggravated vehicle taking without consent – death caused	2	0	0	0	2
Aggravated vehicle taking without consent – injury caused	101	90	65	53	55
Aggravated vehicle taking without consent – dangerous driving	346	286	286	242	261
Aggravated vehicle taking without consent – vehicle/property damage of £5,000 or over	276	287	286	227	229
Aggravated vehicle taking without consent – vehicle/property damage of less than £5,000	1,139	1,067	832	679	598

3.5 The PCSC Bill also includes a new offence of causing serious injury by careless or inconsiderate driving which will have a statutory maximum sentence of 2 years imprisonment. It is proposed that this should also be included.

3.6 The Council may wish to consider if guidelines are required for offences which are very low volume. These include; Causing death by driving whilst unlicensed or uninsured; Causing death by driving whilst disqualified; Causing serious injury by driving whilst disqualified and Aggravated vehicle taking without consent – death caused. The first two offences listed are provided for in the SGC guideline which combines the offences in the guideline Causing death by driving: unlicensed, disqualified or uninsured drivers. There have been less than five offenders sentenced for Aggravated vehicle taking without consent – death caused since 2015 and no guidance exists. CPS charging guidance confirms that where there is evidence of dangerous driving and that the defendant was the driver, prosecutors should charge an offence of causing death by dangerous driving. There is no existing guidance for sentencing Causing serious injury by driving whilst disqualified.

3.7 While these offences are low volume, it is thought that all should initially remain within the scope of the project given that there is either existing guidance, which it might be

considered we ought to replace as opposed simply to withdrawing; or, in terms of the low volume offences, they share features with the higher volume offences which are within scope. For example, if guidelines will be developed for offences involving aggravated vehicle taking where serious injury is caused it may be difficult to justify not providing a guideline for offences where a death is involved. It is proposed the offences listed remain within the scope of the project given that no unnecessary work would be required to consider relevant factors.

Question 1: Does the Council agree that the guideline should include the offences listed at paragraph 3.4?

3.8 It is also proposed that work is undertaken to identify if the MCSG drug driving guidance can be improved. The MCSG drug driving guidance currently states:

The Sentencing Council will, in due course produce a guideline with the assistance of evidence and data gathered by the Department for Transport. Any new guideline will be made subject to public consultation before it is finalised.

It is proposed that we explore whether evidence supports the development of guidance relating to types and levels of drugs and impact upon driver impairment, as is the case for alcohol levels in drink driving offences. Initial discussions with DfT officials have been undertaken and it has been suggested that this may be possible. It should be noted that this may require expert advice which may incur a small cost.

Question 2: Does the Council agree that the project should include consideration of improved guidance for drug driving offences?

3.9 The guidelines for the following offences were updated as part of the MCSG project and came into force in April 2017 and are therefore not proposed for inclusion in the guideline;

- Driving without due care and attention
- Driving without reasonable consideration
- Drink driving
- Speeding offences

Question 3: Does the Council agree that the guideline should not include the offences recently updated in the MCSG?

3.10 Other offences exist for wanton and furious driving. These are included at s35 of the Offences Against the Person Act which provides:

S35 OAPA 1861 Drivers of carriages injuring persons by furious driving.

Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years.

CPS charging guidance confirms that these offences should only be charged where an offence cannot be charged as a Road Traffic Act offence, such as when the driving was not on a road or other public place or when the vehicle used was not a mechanically propelled vehicle (such as a bicycle or horse drawn vehicle). Volumes are therefore low with only four offenders sentenced in 2019. While volumes are low, this offence is likely to be charged where a cyclist injures another person when cycling. An alternative view may be that that these could be considered as analogous offences to others with the same statutory maximum sentence which would be included in the guideline, and it is therefore not necessary to include them.

Question 4: Should the guideline include the offence of wanton and furious driving?

4 IMPACT AND RISKS

4.1 There are no risks identified at this point, although the passage of the PCSC Bill will be monitored closely as will have an impact upon when some work can be completed.

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